



Comptroller General
of the United States

Washington, D.C. 20548

153998

Decision

Matter of: Survivor Benefit Plan Annuity for Illegitimate Child

File: B-258764

Date: March 17, 1995

DIGEST

An illegitimate child who was recognized as a natural child of the member and lived with the member in a regular parent-child relationship for a period of time during the member's life is entitled to a Survivor Benefit Plan annuity.

DECISION

This is an appeal from the settlement of our Claims Group denying the entitlement of the illegitimate child of a deceased retired Air Force member to a Survivor Benefit Plan (SBP) annuity. For the following reasons the child is entitled to an annuity.

The child, Tiffany Ryan, was born on May 16, 1985. The member, who was married at the time and had two children by his spouse, acknowledged paternity on July 10, 1985, and Tiffany's birth certificate was amended to show his last name as hers. On October 11, 1985, the member completed an SBP election form and established spouse and child coverage but listed only his two legitimate children on the form. The member retired on October 24, 1985, and was divorced from his wife in 1988. He married another woman, not the mother of Tiffany, before his death on October 31, 1992.

The mother of Tiffany appeals the settlement of the Claims Group which found that Tiffany and the member were not living in a "regular parent-child relationship" and therefore, Tiffany did not meet the definition of "dependent children" contained in the SBP legislation.

Section 1447 (5) of title 10 of the United States Code defines "dependent child" for the purposes of receiving an annuity as unmarried, under 18 years of age and the child of a person to whom the plan applies, including (i) an adopted child, and (ii) a stepchild, foster child or recognized natural child who lived with that person in a regular parent-child relationship.

Here, the record shows that the member acknowledged paternity of Tiffany and had signed a notarized agreement 2 months after her birth agreeing to contribute \$150 per month for her support, which payments he made until his death. Statements of relatives

and neighbors have been submitted by Tiffany's mother indicating that the member, following his divorce, lived at the residence of Tiffany and her mother a considerable period of time until his second marriage. The record also indicates that, while he maintained a separate residence during this period, Tiffany and her mother were frequent visitors at this residence.

In 1980, the United States Supreme Court interpreted the phrase "regular parent-child relationship" as it was then used in the Civil Service Retirement Act (CSRA), 5 U.S.C. § 8341(a)(3)(A), in United States v. Clark, 445 U.S. 23 (1980). After reviewing the legislative history of the provision, the Court concluded that the legislative history was devoid of any indication whether Congress intended that annuities could be recovered by all recognized natural children who had once lived with the employee in a familial relationship, or, as urged by the Government in Clark, only by such children who were living with the employee at the time of death. Noting that the Congress "has demonstrated...that it knows how to restrict the class of eligible beneficiaries to those living with an individual at a particular time" if it so intends, and noting also that the "less restrictive construction... appears fair and reasonable in light of the language, purpose, and history" of the provision, the Court determined that the "lived with" requirement had no "temporal limitation" and was met even if the child was not residing with the member at the time of the member's death, so long as the child had previously resided with the member. This requirement was subsequently deleted from the CSRA but remains in the SBP.

In 70 Comp. Gen. 25 (1990), our Office interpreted the requirement that the member and the child lived in a regular parent-child relationship. In that decision, we considered two different factual situations involving illegitimate children and found neither child had lived in such a relationship and therefore did not qualify for an annuity. In one case, the child never lived with the member, but visited him in the hospital. In the other, the child spent occasional weekends and vacations with the member, but never resided with the father.

The record here indicates that Tiffany's relationship with the member here meets the standard articulated in Clark. Though the record does not suggest that Tiffany and her father lived permanently or continuously with each other, it does contain evidence that they resided with each other with a fair amount of consistency at least for a definable period of time. The record here is also clearly distinguishable from the cases we considered in 70 Comp. Gen. 25, where the children visited but did not reside with the member. Tiffany and the member resided in the same household for a considerable period of time, and the member took a clear measure of responsibility for the child over the duration of his lifetime after she was born. We conclude that the relationship meets the requirements of 10 U.S.C. § 1447(5).

Finally, the fact that Tiffany was not listed by the member on the SBP election form which he completed does not deny her an annuity. Because he executed the form when he became entitled to retired pay, any eligible beneficiaries were covered as soon as he

retired. 70 Comp. Gen. 25 at 26 (1990).

Accordingly, we find that Tiffany is entitled to a SBP annuity.

for \s\ Seymour Efros
Robert P. Murphy
General Counsel

B-258764

The Honorable Jim Kolbe
Member, United States
House of Representatives
1661 North Swan Road
Suite 112
Tucson, AZ 85712

Dear Mr. Kolbe:

This is in response to your letter of September 12, 1994, regarding the claim of Vernita Henson-Moore on behalf of her daughter, Tiffany Ryan, for a Survivor Benefit Plan annuity.

Enclosed is a copy of our decision of today in the matter.

Sincerely yours,

Robert P. Murphy
General Counsel

Enclosure

B-258764

**The Honorable John McCain
United States Senator
450 West Paseo Redondo
Suite 200
Tucson, AZ 85701**

Dear Senator McCain:

This is in response to your expression of interest in the claim of Vernita Henson-Moore on behalf of her daughter, Tiffany Ryan, for a Survivor Benefit Plan annuity.

Enclosed is a copy of our decision of today in the matter.

Sincerely yours,

**Robert P. Murphy
General Counsel**

Enclosure

B-258764

**Ms. Mary Jane Skeels
Defense Finance & Accounting Service
Chief, Survivor Benefit Division
6760 E. Irvington Place
Denver, CO 80279**

Dear Ms. Skeels:

Enclosed for your action is a copy of our decision of today regarding the claim of Vernita Henson-Moore for a Survivor Benefit Plan annuity for Tiffany Ryan, the daughter of Ms. Henson-Moore and Master Sergeant James P. Ryan, USAF (Retired) (Deceased).

Sincerely yours,

**Robert P. Murphy
General Counsel**

Enclosure